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06   UNITED STATES DISTRICT COURT
               WESTERN DISTRICT OF WASHINGTON
07   AT SEATTLE

08 DONALD L. GRABNER,   )   CASE NO. C09-0012-RSM
)
09   Plaintiff,   )
)
10   v.   )   REPORT AND RECOMMENDATION
)
11 JULIE C. WALTERS, et al.,   )
)
12   Defendants.   )
    _____)

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14   Plaintiff has presented to this Court for filing a civil rights complaint under 42 U.S.C. §

15 1983 together with an application to proceed with this action *in forma pauperis*. Plaintiff appears

16 to allege in his complaint that he was improperly convicted of the crime for which he is currently

17 incarcerated. Plaintiff seeks damages as well as release from custody.

18   Where a prisoner challenges the fact or duration of his confinement, his sole federal remedy

19 is a writ of habeas corpus. *Preiser v. Rodriguez*, 411 U.S. 475, 489-90 (1973). In *Heck v.*

20 *Humphrey*, 512 U.S. 477 (1994), the United States Supreme Court held that a § 1983 claim that

21 calls into question the lawfulness of a plaintiff's conviction or confinement does not accrue "unless

22 and until the conviction or sentence is reversed, expunged, invalidated, or impugned by the grant

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01 of a writ of habeas corpus." *Id*. at 489.

02   It appears from the face of the complaint that plaintiff is attempting to challenge the

03 validity of his current confinement in this § 1983 action. However, plaintiff has not demonstrated

04 that his conviction or sentence has been reversed, expunged, invalidated, or impugned. Thus,

05 under *Heck*, plaintiff's § 1983 claim has not yet accrued, and is therefore not cognizable in this

06 proceeding. As plaintiff has not stated a cognizable claim for relief in these proceedings, this

07 Court recommends that plaintiff's application to proceed *in forma pauperis* be denied and that this

08 action be dismissed, without prejudice, prior to service, for failure to state a claim upon which

09 relief may be granted under § 1915(e)(2)(B)(ii). A proposed Order reflecting this recommendation

10 is attached.

11   DATED this 16th day of January, 2009.

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13   Mary Alice Theiler
                               United States Magistrate Judge

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